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POLICY ISSUES

EMERGING POLICY ISSUES

Programme for the Development and Periodic Review of Environmental Law beyond the year 2000

Report of the Executive Director

Summary

This report describes progress made in the implementation of the Programme for the Development and Periodic Review of Environmental Law for the 1990s (Montevideo Programme II), one of the core elements of the focused mandate of the revitalized United Nations Environment Programme (UNEP) as contained in the Nairobi Declaration on the Role and Mandate of UNEP. It also proposes a process for the preparation of a new strategic UNEP programme concerning environmental law for the first decade of the next millennium.

Suggested action by the Governing Council

The Governing Council may wish to:

Take note with appreciation of the progress made in the further implementation of the Programme for the Development and Periodic Review of Environmental Law for the 1990s;

Request the Executive Director to undertake a process of preparation of a new Programme for the Development and Periodic Review of Environmental Law, in consultation with Governments and relevant organizations, and, as part of that process, to convene a meeting of senior government officials expert in environmental law in the year 2000;

* UNEP/GC.20/1.

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Authorize the Executive Director to continue to draw on the current Programme for the Development and Periodic Review of Environmental Law as strategic guidance for the work of UNEP in the field of environmental law until a new Programme is adopted by the Council, and in that connection, also authorize him to assist Governments and organizations, upon request, in developing international environmental agreements;

Further request the Executive Director to report on the outcome of the implementation of the present decision to the Council at its twenty-first session.

I. INTRODUCTION

1. Since the establishment of UNEP, environmental law has been one of its priority areas, recognized as an effective tool to catalyse national and international action in the field of the environment. The role and competence of UNEP in the progressive development and promotion of environmental law has been repeatedly emphasized in various international forums, including the General Assembly, the Governing Council and the Commission on Sustainable Development.

2. Agenda 21, in chapter 38, identified environmental law as one of the priority areas on which UNEP should concentrate. In particular, it underscored the role of UNEP in the further development and implementation of international environmental law, and the provision of technical, legal and institutional advice to Governments in establishing and enhancing their national legal and institutional frameworks. The role was further emphasized in the Nairobi Declaration, as well as in the Programme for the Further Implementation of Agenda 21 adopted by the General Assembly at its nineteenth special session. 1/ Coherent interlinkages among relevant environmental conventions have been underscored as part of the role of UNEP in the further development of international environmental law.

II. IMPLEMENTATION OF THE MONTEVIDEO PROGRAMME II

3. Following the successful implementation of the Montevideo Programme for the Development and Periodic Review of Environmental Law, 2/ the Montevideo Programme II 3/ has guided UNEP as the broad strategy for its activities in the field of environmental law.

4. In December 1996, a meeting of senior government officials expert in environmental law was convened by UNEP to conduct the mid-term review of the Montevideo Programme II, 4/ and its outcome was reported to the Governing Council at its nineteenth session. 5/ On the basis of the mid-term review, the Governing Council, in decision 19/20, commended UNEP for the action it had taken to implement the Montevideo Programme II over the period 1993-1996 and reaffirmed that the environmental law programme should remain among the major programme areas on which UNEP should concentrate its 1998-1999 programme of work.

1/ Resolution S-19/2 of 28 June 1997.

2/ Adopted by the Governing Council in decision 10/21 of 31 May 1982.

3/ The programme was adopted by the Governing Council in decision 17/25 of 21 May 1993, to which it is annexed.

4/ The report of the meeting is to be found in document UNEP/Env.Law/3/3.

5/ UNEP/GC.19/32.

5. Since the nineteenth session of the Governing Council, further progress and achievements have been made in the implementation of the Montevideo Programme II. They are summarized below. 6/

Further development and promotion of international legal instruments in the field of the environment

6. UNEP has initiated a study on means and mechanisms for environmental dispute avoidance and settlement, involving a group of internationally recognized legal experts from different regions. 7/ UNEP convened the first and second meetings of the international group of experts in Vienna and London in July and September 1998, respectively. As a result, significant progress was made in the preparation of this study. 8/ The third and final meeting is scheduled to be held in New Delhi in January 1999.

7. In the field of chemicals, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted on 10 September 1998 at a diplomatic conference convened by UNEP and FAO. The negotiation of an international legally binding instrument for implementing international action on certain persistent organic pollutants commenced at the first session of the Intergovernmental Negotiating Committee for the instrument, convened by UNEP in Montreal from 29 June to 3 July 1998.

8. In its capacity as the interim secretariat for the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, UNEP has continued to assist the Parties to the Agreement in making arrangements for its implementation. 9/

9. Thanks to UNEP assistance to Governments in the Caspian Sea region, a draft framework convention on the Caspian Sea environment is being developed. In February 1998, an intergovernmental meeting was held in Moscow to consider the draft text of the convention. The revised draft convention will be further considered by the next intergovernmental meeting, scheduled for February 1999.

10. UNEP has continued to collaborate with the Economic Commission for Europe and the Regional Office for Europe of the World Health Organization (WHO) by providing legal expertise in the development of a protocol on water and health to the 1992 Convention on the Protection and Use of Transboundary

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6/ The summary covers activities between February 1997 and October 1998.

7/ The study is being carried out in cooperation with the University of Vienna in Austria, Jawaharlal Nehru University in India, the University of British Columbia in Canada and Moi University in Kenya.

8/ The study will be made available to the Council at its twentieth session.

9/ As requested by the Governing Council of the Lusaka Agreement at its first meeting, held in Nairobi in March 1997.

Watercourses and International Lakes. The draft protocol is expected to be submitted, for adoption and signing, to a Ministerial Conference on Environment and Health to be held in London in June 1999.

11. UNEP, through its programmatic and coordinating activities, has continued to contribute to the implementation of the United Nations Convention on the Law of the sea, and in particular Part XII, "Protection and preservation of the marine environment". UNEP has also continued to assist Governments to develop new regional seas agreements and institutional arrangements, as in the preparation of the Protocol to the Kuwait Regional Convention on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and Other Wastes (adopted in March 1998), development of a draft regional convention and action plan for the protection of the marine environment of the East-Central Pacific, and development of instruments under the North-West Pacific Action Plan. It is also assisting the Governments of parties to the 1985 Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi Convention) in updating it, taking into account recent developments, especially after the United Nations Conference on Environment and Development.

12. In the context of the preparation of the second report in the Global Environment Outlook series, UNEP is developing a methodology to assess the impact of international environmental conventions on the environment, as a means of assisting Governments in assessing the adequacy and effectiveness of such instruments.

Provision of assistance for strengthening national environmental legislation and institutions, and provision of environmental law training, education and information

13. UNEP provides assistance to Governments of developing countries and countries with economies in transition, upon request, for the strengthening of national environmental legislation and related institutions, including legal regimes for effective implementation of international environmental agreements.

14. In Africa, UNEP assisted 11 countries in the formulation of national environmental legislation and the establishment or support of appropriate institutions (Burkina Faso, Cameroon, Ghana, Kenya, Lesotho, Malawi, Mauritania, Mozambique, Niger, Sao Tome and Principe and United Republic of Tanzania). 10/ UNEP also provided such assistance to 9 countries in Asia and the Pacific (Bangladesh, Cambodia, India, Maldives, Myanmar, Nepal, Samoa, Sri Lanka and Viet Nam), 2 countries in West Asia (Lebanon and Oman), one country in Latin America and the Caribbean (Peru) and one country whose economy is in transition (Uzbekistan).

15. With regard to environmental law training, UNEP convened the Third Global Training Programme in Environmental Law and Policy in Nairobi from 22 September to 9 October 1997, as a result of which approximately 30 government

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10/ This includes the assistance provided under the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa.

lawyers and policy-makers from developing countries and countries with economies in transition enhanced their knowledge and skills in environmental law.

16. In cooperation with relevant organizations, UNEP convened a number of regional environmental law training workshops, symposia and courses, targeted at government officials associated with environmental policy-making and management, the judiciary and other relevant parties, for countries in Africa 11/ and Asia and the Pacific. These training activities were designed to contribute to the implementation of the Montevideo Programme II and covered such subjects as: environmental law and sustainable development; implementation of major international environmental conventions; the role of the judiciary in promoting the rule of law in the area of sustainable development; environmental education for university lecturers; methodologies for the development of environmental standards; incorporation of biodiversity-related conventions into national laws; environmental litigation; building partnership with industry; and environmental compliance and enforcement. UNEP has also developed a general plan for environmental law training for application in Latin America and the Caribbean.

17. Significant progress has been made towards the planned establishment of the UNEP/IUCN Joint Environmental Law Information Service 12/ in 1999. The Service aims to provide developing countries and countries with economies in transition with global Internet access to information on international treaties, national legislation, soft law, literature and judicial decisions in the field of the environment. This will be complemented by related work being undertaken by the UNEP regional offices for Asia and the Pacific and Latin America and the Caribbean.

18. UNEP has added a number of items to its list of environmental law publications prepared on the basis of its activities at the regional and global levels, and distributed them to Governments and organizations concerned, with a view to promoting wider appreciation of environmental law, in particular among those who might influence decision-making in the field of environment and development.

Problems encountered

19. It should be noted that, although there has been progress in the implementation of the Montevideo Programme II, this was possible only because of counterpart funding by donor Governments in support of activities in the development of new international legally binding instruments and the provision of legal advisory services for developing national environmental legislation and institutions.

11/ Including those convened under the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa,

12/ Funded by the Government of the Netherlands.

III. THE MONTEVIDEO PROGRAMME BEYOND THE YEAR 2000

20. The first and second Montevideo Programmes have been the instruments through which UNEP has received long-term policy guidance from Governments concerning the development of environmental law in the agreed programme areas. Since activities in those programme areas are to be implemented as directed by Governments in the Programmes, UNEP has become accountable to Governments in carrying out activities in this field. Considering the achievements so far under the two Programmes, it is clearly desirable for Governments and UNEP to continue to be guided by such a consistent long-term programme for UNEP's activities in the field of environmental law.

21. With regard to the Montevideo Programme II, while its cross-sectoral programme areas A-H might, with some adjustments, continue to be relevant in the near future, the sectoral programme areas I-S need to be revised to reflect recent developments and to meet the emerging environmental challenges. There is also a need to incorporate into the Programme new policy directions, such as: the enhanced linkage of legal instruments with economic and other policy instruments; practical ways and means to develop coherent interlinkages among relevant environmental conventions; innovative mechanisms to enhance compliance with agreed environmental norms, standards and obligations and UNEP's role therein; and modalities to involve all relevant sectors of society in environmental decision-making and to enhance access to justice in environmental matters.

22. Given the above, there is a need for a major review of the Montevideo Programme II and the preparation of a new strategic environmental law programme for UNEP for the first decade of the next millennium.

Process for the preparation of a new programme (Montevideo Programme III)

23. The proposed process of preparation of a new programme is as follows:

(a) Preparation of a report on the implementation of the Montevideo Programme II - between the second half of 1999 and the first half of 2000;

(b) Study of the possible content of the new programme by an international expert group - between the second half of 1999 and the first half of 2000;

(c) A meeting of senior Government officials expert in environmental law to elaborate the draft programme - second half of 2000;

(d) Submission of the new programme to and its adoption by the Governing Council at its twenty-first session - 2001.